

Staff Study #16, "U.S. Policies on Enforcement of Controls"

I Analysis of Problems and Deficiencies of Enforcement (pages 10-16)

The section of the staff study bearing the above title makes the following principal points:

(a) Multilateral problems and deficiencies:

(1) Negotiating difficulties and delays have been experienced (p. 10)

(2) Lack of PC enthusiasm for an enforcement program:

(a) Principally due to prevailing political climate in Europe (p. 10-11). This the most important factor and likely to represent an increasing problem as hope for coexistence grows. (p.10-11)

(b) Other causes for lack of enthusiasm: (p. 11)

(1) Fear of unevenness of "sacrifice" among PCs

(2) Emphasis on trade promotion

(3) Confidential nature of controls in some countries

(4) Understaffing enforcement entities and inadequate indoctrination

(5) Reluctance to discuss mutual problems with U.S.

(6) Inadequate intelligence.

(3) Non-uniformity of controls among PCs (p. 11)

(4) Inadequate legal bases for controls (p. 11)

(a) Inadequate sanctions to deter violators (p. 11)

(5) The China differential is the most active and troublesome enforcement problem. (p. 12)

(a) "There has been little evidence" that the PCs have refrained from exporting to the European Bloc under circumstances where "it was likely" the goods would

be diverted to China. (p. 12)

(a) Multilateral problems and deficiencies (cont)

(5) The China differential (cont)

- (b) "The quantity and value of known diversions to China via the European Bloc Europe and Western countries have been significant." (p. 12)
- (c) Most IL/III and China Special List items no longer require licensing, except to China (direct ?). IC/DV applies only to Munitions, AE and IL/I and II. TAC applies only to Munitions, AE and IL/I. These have facilitated diversions to China. (p. 12)
- (d) The China differential problem is the only one of the five above that is "serious". (p. 12) Regarding it, its nature plus the PC reluctance to any extension of controls, makes it "most doubtful" that China enforcement could be tightened. But our future course of action depends on outcome of over-all review of policy. (p. 12)
- (1) - (4) Regarding items (1) - (4), above, "we can only point out PC deficiencies as they occur and press for the small modifications required to effect improvements.(p.12)

(b) Unilateral problems of U.S.: (p. 13-16)

(1) U.S. in role of international policeman, especially re non-US goods:

(a) U.S. has been active, but our activity has been received by PCs with mixed feelings and our ability to take effective action has varied from country to country. Our admin. action is "at best only tolerated", especially when local laws have not been violated. (p. 13)

(b) Query whether the expenditure of good will in this pressure for enforcement is made "wisely or wastefully". (p. 14)

(c) Re non-US origin goods, the most serious U.S. problems come from embarrassment of friendly countries when we expose inadequacies. (p. 14) Our future problem is to be more diplomatic in bringing pressure to persuade our friends toward self-improvement. (p. 14)

(2) ~~for~~ Re US origin goods: (under controls)

(a) ~~for~~ Problem of U.S. item incorporated into another end product, and problem of control of latter. (p. 14)

(b) ~~for~~ PD-810 (mentioned, but no discussion) (p. 14)

(c) ~~for~~ Objections to U.S. Foreign Service investigations as infringement of local sovereignty or violation local commercial espionage laws (p. 14-15)

(3) U.S. controls over non-IL goods:

(a) Must distinguish between Positive List and GRO, the latter being harder to justify when seeking international cooperation but not to be ignored due U.S. political reasons. (Conclusion: GRO items are a problem and less susceptible than Positive List to enforcement.) (p. 15-16)

Possible Future Courses of Action (p. 16-20)

The section of the staff study bearing the above title makes the following principal points:

- (a) "Unlikely that more than routine procedural modifications can be effected in existing controls (without some drastic change in overall control policy)." (p. 16) Without a further downward revision or a basic change in the differential levels, few PCs will be willing to adopt more rigid enforcement measures.
 - (1) Extensive negotiations with PCs would only antagonize and dissipate goodwill "required for more important problems not only in the econ. def. field but also in broader area of E/w policy." (p. 16)
- (b) What to do about U.S. export controls, (assuming need for excons continues indefinitely and little chance obtain much tighter or broader international control?)
 - (1) U.S. excon can be improved. Present program represents compromises due to: (p. 16)
 - (a) administrative limitations; lack appropriately trained investigative personnel for operations abroad, etc. (p.17)
 - (2) Improvements in U.S. excon program could be accomplished by:
 - (a) using additional especially trained personnel abroad to supplement FSO's
 - (b) cope with TAC inadequacies by instituting system of U.S.-approved forwarders who have signed agreements not to accept instructions to divert (p. 17)
 - (c) Require destination control notices on all B/L and invoices (p. 18)

(c) Advantages of tighter U.S. enforcement vs disadvantages

Pro:

increased security and
less risk of diversion

Congressional approval
(maybe)

Con:

additional foreign criticism

probable complaints from
exporters

increased costs of operating
controls

(d) Advantages of present level of enforcement: policies and procedures known and accepted by foreign govts, Congress, trade, and public; they are reasonably efficient as a reasonable cost.

(1) "On balance it probably would be preferable to maintain the status quo in U.S. enforcement policy pending some major change in our overall economic defense policy." (p. 18)

(e) We can also continue our efforts to enlist non-PC cooperation and participation in enforcement. (p. 18)

(1) This requires additional study of those countries. (p. 18)

(f) We should improve intelligence collection and dissemination (p. 19)

(1) Not the business of Foreign Service to collect covertly. "An expanded effort on the part of the intel. collection agencies in the field of E/W trade would undoubtedly bring forth an increased volume of information." (p. 19)

(g) We should improve collaboration between U.S. element abroad (p. 19)

(h) We should encourage cooperation and multilateral exchanges of information in handling of illegal E/W transactions (p. 19)

(1) Support use of COCOM forum, and expand on interchange among technical and enforcement experts of PCs. (p. 19) Encourage other PCs and deemphasize U.S. (p. 19-20)